



DEPARTMENT OF THE CORPORATION COUNSEL

Carrie K.S. Okinaga, Corporation Counsel
Donna M. Woo, First Deputy Corporation Counsel

POWERS, DUTIES AND FUNCTIONS

The Corporation Counsel serves as the chief legal advisor and legal representative of all agencies, the Council and all officers and employees in matters relating to their official powers and duties, and shall represent the City in all legal proceedings and shall perform all other services incident to the office as may be required by the Charter or by law.

ORGANIZATION OF DEPARTMENT

The Department of the Corporation Counsel is organized into the Administration and four other Divisions, namely:

1. Counseling and Drafting
2. Litigation
3. Family Support
4. Real Property Tax

COUNSELING AND DRAFTING DIVISION

The Counseling and Drafting Division is comprised of 20 deputies corporation counsel, four paralegal assistants, seven legal clerks and one librarian technician. The Division performs the function of legal advisor to all the City agencies, the City boards and commissions, and the City Council and its committees. In this advisory function, the Division is responsible for rendering oral and written opinions to all of the entities it advises, for drafting bills and resolutions for submission to the City Council or the State legislature, for reviewing and approving legal documents to which the City is a signatory, and for attending all the meetings of the City Council, the council committees, and the City boards and commissions.

The Division performs the legal representation function, representing city agencies, in city and state administrative proceedings. The Division also performs the legal representation function in selected court proceedings such as eminent domain proceedings, quiet title, partitions of land court property, administrative appeals, foreclosures, bankruptcy, interpleader actions for the return of seized property and other matters as may be specially assigned to it.

Statistics

For the fiscal year July 2006 to June 2007 the Division commenced the year with 4,673 outstanding opinion requests; thereafter it received 1,210 requests, completed and closed 2,056 requests, and had a workload of 5,883 requests during the year. The Division closed the year with a total of 3,827 outstanding requests. Separate and apart from the foregoing count of opinion requests, the Division issued one published Memoranda of Law, which responded to one opinion request during the year.

The Division commenced the year with 38 outstanding drafting requests (i.e. requests to draft bills, resolutions, leases, easements, contracts etc.), and thereafter received 91 requests, completed and closed 89 requests, and had a workload of 129 requests during the year. The Division closed the year with a total of 40 outstanding requests.

The Division commenced the year with 497 outstanding requests for review and approval of legal documents; thereafter it received 4,749 requests, completed and closed 4,283 requests, and had a workload of 5,246 requests during the year. The Division closed the year with a total of 963 outstanding requests.

The Division commenced the year with 327¹ outstanding pre-suit cases (i.e. adversarial proceedings pending before administrative bodies); thereafter it received 76 requests, completed and closed 72 requests, and had a workload of 403 cases during the year. The Division closed the year with a total of 331 outstanding requests. The Division commenced the year with 510² outstanding case assignments (i.e. cases in any of the state or federal courts); thereafter it received 113 requests, completed and closed 132 requests, and had a workload of 623 cases during the year. The Division closed the year with a total of 491 outstanding requests.

¹The Division completed the conversion of all cases to the ProLaw system during this fiscal year. As a result of this conversion, errors in several records were discovered and corrected, thus adjusting the total of backlog cases.

²See footnote 1 above.

HIGHLIGHTS AND ACCOMPLISHMENTS

Legislative Liaison

The Division monitored legislation before the 2007 State Legislature that affected legal issues of the City. A deputy was designated to track the progress of bills in the Senate and the House and through the crossover dates. The Division also coordinated and assisted with the preparation of legislative testimony for bills with legal issues that affected the City. (Reid M. Yamashiro)

State Legislation Relating to County Liability

Of particular concern during the 2007 State Legislative Session were existing sunset dates for several statutory provisions that provided immunity and indemnification from liability to the counties. Efforts were directed to either extending or repealing existing sunset dates. The Division assisted with the coordination of the City's efforts, coordination of efforts among the counties, drafting proposed language for the legislation, and meeting with State legislators to share the concerns of the City with provisions of the pending bills or should the legislation be allowed to sunset. Act 152 was signed into law by Governor Lingle on June 7, 2007, and includes several key provisions as follows: (1) Repeals the sunset date and made permanent Act 190, Sessions Laws of Hawaii 1996, as amended by Act 101, Session Laws of Hawaii 1999, and as amended by Act 170, Sessions Law of Hawaii 2002 (establishing a sunset date of June 30, 2007 for Act 190). Act 190 provides the State and counties with limited immunity from liability arising from dangerous natural conditions existing in the ocean when the requirements of Act 190, including the posting of signage, are met; (2) Extends the sunset date of Act 170, Session Laws of Hawaii 2002 from June 30, 2007 to June 30, 2010. Act 170 grants partial immunity to a county lifeguard and employing state or county entity from liability arising from any act or omission of a lifeguard when providing rescue, resuscitative services, or other lifeguard services on the beach or in the ocean within the lifeguard's scope of employment. Immunity under Act 170 does not apply to acts of gross negligence or wanton acts or omissions of the lifeguard; (3) Extends the sunset date of Act 82, Session Laws of Hawaii 2003, from June 30, 2008 to June 30, 2010. Act 82 grants the State and counties immunity from liability arising from injuries on improved public lands when the requirements of Act 82, which include posting of signage, are met; (4) Extends the statute of limitations period for the filing of claims against the counties from six months to two years after the injury occurred; and (5) Authorizes the State to indemnify the counties in order for the State to receive county aid, assistance, benefits, and services or to use county property.

Prior to the adoption of Act 152, the State had refused to indemnify the City when using city property for state activities. The Attorney General maintained the position that state agencies did not have legal authority to indemnify the City. Following the adoption of Act 152, a state agency may now indemnify, defend and hold harmless the City when receiving city aid or using city property when the governor approves the indemnification and the State Comptroller either obtains an insurance policy to cover the liability anticipated to arise under the indemnity or determines it is not in the best interest for the State to obtain insurance. The Division advised city agencies to employ the provisions of Act 152 when state agencies seek city aid or request the use of city property to the mutual benefit of both governments. (Dawn D.M. Spurlin)

COMMUNITY SERVICES SECTION

Kawainui Marsh

The Division assisted in the negotiation of an agreement between the City and the State, and in asserting the inclusion of the City's position in the development of Act 235, Session Laws of Hawaii 2007, which provides for the transfer of Kawainui Marsh to the State and for the maintenance and operation of the flood control improvements associated with Kawainui Marsh. (Kathleen A. Kelly)

TheBoat

The Division assisted the Department of Transportation Services with the procurement of an operator for the City's demonstration intra-island ferry project. The Division reviewed the agreement and contract amendments for the operation of the ferry, the revocable permits and other documents related to the project, and procured a maritime attorney to assist with maritime issues. (Reid M. Yamashiro)

Mass Transit

The City's undertaking of a mass transit project presents multiple and varied legal issues for our department. In the last year the Division counseled and advised the Department of Transportation Services (DTS) on issues related to City Council legislation pertaining to mass transit. The Division advised DTS on issues arising out of the Council's consideration and adoption of Ordinance No. 07-001 that selects the City's locally preferred alternative for the Honolulu High-Capacity Transit Corridor Project as a fixed guideway system and the alignment of the system between Kapolei and the University of Hawaii at Manoa. The Division also advised DTS on issues arising out of the Council's consideration

and adoption of Resolution No. 07-039, FD1(c) that identifies the minimum operable segment for the Honolulu High-Capacity Transit Corridor Project to be between the University of Hawaii-West Oahu to the Ala Moana Center, where the minimum operable segment is described as that portion of the system that is to be first constructed with the revenues available from the general excise and use tax surcharge and with funds reasonably expected from the federal government and other state and private sources. In addition, the Division advised DTS on mass transit issues relating to compliance with federal, state, and city laws, and reviewed contract documents for consultants retained by the City for services to be performed on mass transit projects. (Reid M. Yamashiro)

Neighborhood Commission

The Division reviewed and proposed substantive and formatting revisions to the draft Neighborhood Plan to assist the Neighborhood Commission in its consideration and adoption of its Revised Neighborhood Plan. The revisions included a proposal to segregate the document into three distinct parts, a Table of Contents, the Commission Rules and Procedures, and the Neighborhood Plan. Other revisions proposed language revisions for clarity, and formatting, numbering and citation revisions to comply with drafting principles for administrative rules. Specific items of revision were proposed to the Commission for its consideration, concurrence and approval. The Commission approved, adopted and released for public information the revised versions of the Commission Rules and Procedures and the Neighborhood Plan at its regular meeting on August 27, 2007. The Commission voted at a special meeting on September 5, 2007, to proceed with public hearings on the documents.

The Division will continue to advise the Neighborhood Commission on procedural matters and legal issues presented during the public hearing process and through the final adoption of the document by the Neighborhood Commission. (Jennifer D. Waihee, Donna M. Woo, Diane T. Kawauchi)

City and County of Honolulu v. Richard Lum, Successor Trustee, et al., Civil No. 05-1-0102-01

The Division successfully concluded by agreement of the parties, a lease-to-fee condominium lawsuit that resulted in more than one-half of the condominium owners in the project purchasing the leased-fee interest in their condominium units. Under existing law at the time, the City initiated a lawsuit to acquire the leased-fee interest for qualified lessees in the Makiki Manor condominium project. The case was one of the last lease-to-fee condemnation cases filed by the City and was allowed to proceed because the condemnation had been approved by City Council resolution prior to the effective date of Ordinance No. 05-001, which repealed the City's residential leasehold conversion ordinance. The parties in the case had extensive negotiations, discussions and mediation sessions followed by several settlement conferences with the court. Subsequent to the conferences with the Court, the fee owners and condominium unit lessees were able to agree upon a price for the purchase of the leased-fee interest. As a result, the lessees of 20 units, representing more than 50 percent of the owners of all condominium units in the project, were able to convert their leasehold units to fee simple units. (Winston K.Q. Wong)

FINANCE SECTION

Wireless Enhanced 911 Fund

Wireless Enhanced 911 service allows a wireless or mobile telephone to be located geographically using some form of radio-location from the cellular network, or by using a Global Positioning System built into the phone itself. Deployment of WE911 allows faster, more accurate response to emergency calls made from mobile telephones.

The WE911 Board was created by Hawaii Revised Statutes Chapter 138 to oversee distributions from the Wireless Enhanced 911 Fund for reimbursement of the costs to deploy wireless enhanced 911 service. The Division assisted the Department of Information Technology ("DIT") with negotiation and drafting of the agreement with the WE911 Board. The DIT was entitled to reimbursement for funds expended to deploy WE911.

The Division also assisted with preparation of the Council resolution that allowed DIT to enter into the intergovernmental agreement. The resolution also authorized the Department of Budget and Fiscal Services to deposit the funds into a special account and to reimburse DIT for funds expended. (Geoffrey M. Kam)

City and County of Honolulu Enterprise Resource Planning System (CHERPS)

CHERPS is a computer software system to integrate previously existing independent City systems into a single system that will service all city departments and all functions. It will replace existing major systems for accounting, human resources and payroll and fixed assets. The Division assisted with the CHERPS deployment, including processing contract amendments, discussions regarding the CHERPS workflows and the preparation of a vendor self service agreement required for any vendor seeking to provide goods or services to the City. (Geoffrey M. Kam)

Honolulu Zoo Public-Private Partnership

The Division assisted the Department of Enterprise Services ("DES") in its project for a public-private partnership for the operation of the Honolulu Zoo between the City and County of Honolulu and the Honolulu Zoological Society. The

Division attended meetings with the Honolulu Zoological Society, DES and the Honolulu Zoo director to negotiate and formulate a master plan for this public-private partnership. The DES engaged the services of a consultant to assist in providing it with a feasibility study and business plan. The Division attended meetings with budget analysts and personnel advisors in developing the City's position and strategy for this program, and continues to assist DES as it reviews and revises the master plan into a document that can be utilized in the coming year as a road map for the successful completion of this public-private partnership. (Chris A. Diebling)

Pouring Rights Contract

The Division assisted the Department of Enterprise Services in its negotiation of the contract for pouring rights at all city venues with Pepsi Bottling Group. (Chris A. Diebling)

Contract Bid Protest

The Division defended the City in a contract bid protest filed with the State of Hawaii, Department of Commerce and Consumer Affairs (DCCA). The City had solicited bids for towing services within the urban Honolulu area in 2002. However after the bids were opened, none of the bidders had qualifying vehicle storage lots within the tow zone areas. As a result, the City cancelled the solicitation and notified the bidders that the boundaries for location of the vehicle storage lots would be broadened to allow more bidders to qualify, and bids would be resolicited. Bidder Stoneridge Recoveries, LLC (Stoneridge), protested the cancellation of the solicitation, claiming that it was entitled to the award of the contract based upon the provisions of the contract for awards to contractors with lots outside the tow zone boundaries. The City denied the protest and Stoneridge requested a DCCA administrative review of the City's decision. The DCCA dismissed the appeal due to lack of jurisdiction. Stoneridge appealed the dismissal to the First Circuit Court, which reversed the dismissal and remanded the case to the DCCA for further proceedings. The DCCA subsequently dismissed the matter on the basis that Stoneridge lacked standing to challenge the City's cancellation of the solicitation. Stoneridge again appealed the dismissal to the First Circuit Court, which again reversed the dismissal and remanded the case to the DCCA for further proceedings. The DCCA thereafter issued a decision on the merits, affirming the City's cancellation of the solicitation based on the lack of any qualified bids and that Stoneridge was not entitled to an award of the contract. Stoneridge has filed another appeal which is pending before the First Circuit Court. (Amy R. Kondo)

Clean Water and Natural Lands Fund and Affordable Housing Fund

The Division assisted the Department of Budget and Fiscal Services in drafting two ordinances to implement the recent charter amendment adopted in 2006 by the electorate, to establish a Clean Water and Natural Lands Fund and an Affordable Housing Fund. Ordinance No. 07-18 creates a Clean Water and Natural Lands Fund to receive and expend monies for the purchase or to otherwise acquire real estate or any interest therein, for land conservation purposes, including protection of watershed lands, forests, beaches, coastal areas, agricultural lands, historic or culturally important land areas and sites, significant habitats or ecosystems, and acquisition of public access to public land and open space. Ordinance No. 07-19 creates the Affordable Housing Fund to receive and expend monies to provide and maintain affordable housing for persons earning less than 50 percent of the median household income in the City, with the housing to remain affordable in perpetuity. (Amy R. Kondo)

Recovery of Solid Waste Disposal Fees

The Division assisted the Department of Budget and Fiscal Services in obtaining a judgment for more than \$830,000 in uncollected solid waste disposal fees incurred by an out-of-state company no longer doing business in Hawaii. The Division successfully collected more than \$250,000 of those fees, and negotiated a payment arrangement to collect the balance over time. The payment plan is secured by the judgment and by real estate in California and Arizona and has thus far been performed on a timely basis. (Gordon D. Nelson)

Defense of Confidential Ethics Commission Files

The Division represented the executive director of the City Ethics Commission in his deposition taken in a civil lawsuit filed in federal court, and successfully defended the Commission in its efforts to preserve the confidentiality of its investigative files against a subpoena issued by one of the private litigants in the case. (Gordon D. Nelson)

INFRASTRUCTURE SECTION

The Division has been involved with the defense of ongoing litigation involving the City's wastewater system. An enforcement action pertaining to the City's wastewater collection system was previously filed against the City in 1994 by the United States Environmental Protection Agency (EPA) and the State of Hawaii Department of Health (DOH) that concluded by consent decree but which remains under court jurisdiction pending compliance with all of the conditions of the decree, and a recent suit was filed in May 2007 relating specifically to the City's force mains and to one pump station arising out of the rupture and spill of the Beachwalk wastewater pump station force main. These two govern-

ment enforcement actions relate closely with the pending lawsuit filed in 2004 by several citizens groups pertaining to wastewater violations summarized in greater detail below.

Sierra Club, Hawaii Chapter, et al. v. City and County of Honolulu, et al.,
USDC Civil No. CV04-00463 DAE-BMK

With the assistance of special deputy corporation counsel, the Division continued to vigorously defend the pending federal district court lawsuit filed in July 2004 and reported in the Department's prior annual report, filed by the Plaintiffs, Sierra Club, Hawaii Chapter, Hawaii's Thousand Friends, and Our Children's Earth Foundation ("Plaintiffs" or "NGOs") against the City and County of Honolulu and Frank Doyle in his official capacity as Director of the Department of Environmental Services. The lawsuit alleges various environmental wastewater related violations against the City including: Repeated spills of raw or inadequately treated sewage from the Sand Island, Honouliuli, Kailua, Waianae, and Kahuku wastewater treatment plants and/or from the collection systems that carry sewage to these wastewater treatment plants; noncompliances of the permit for the Sand Island wastewater treatment plant, e.g., lack of sewage disinfection, pesticide violations, percent removal of biological oxygen demand and total suspended solids, other plant and system upgrade delays, operation and maintenance violations, and grease program violation; noncompliances of the permit for the Honouliuli wastewater treatment plant, e.g., discharge of treated R-1 water and reclamation plant brine water, other discharge and operational problems, and inadequate storm water pollution control plan; violations of the 1999 and 2002 administrative orders issued against the City for the Sand Island wastewater treatment plant; and discharges of pollutants without a permit at Sand Island and Honouliuli wastewater treatment plants in violation of the federal Clean Water Act.

In their lawsuit against the City Defendants, Plaintiffs seek: Declaratory judgment establishing that the City is in violation of effluent limitations established pursuant to the Clean Water Act; injunction ordering the City to take all measures necessary and appropriate to curtail its violations of the Clean Water Act effluent limitations; civil penalties of up to \$32,500 per day of each Clean Water Act violation committed by the City; and attorneys' fees and costs.

In October 2004, the City filed motions to dismiss several of the Plaintiffs' claims. The Division was successful in obtaining a dismissal as to claims pertaining to spills (claim numbers one and two), to the R-1 and brine water at Honouliuli (claim number nine), to the Storm Water Pollution Control Plan at Honouliuli (claim number eleven) and to the 301(h) permits for Sand Island and Honouliuli (claim number twelve) by order of U.S. District Court Judge David Ezra in his September 30, 2005 order. Claims number three, four, five, six, seven, eight and ten remain in the lawsuit. These remaining claims relate to the Sand Island and Honouliuli wastewater treatment plants, and allege violations of the permits issued for the plants and improper operation and maintenance of the plants. Two of the remaining claims also allege non-compliance with two Sand Island administrative orders.

Plaintiffs subsequently filed for reconsideration of the Court's September 30, 2005 order. The Court granted Plaintiffs' motion for reconsideration on claims three and four that allege violations of effluent limitations of the National Pollutant Discharge Elimination System (NPDES) permit for the Sand Island wastewater treatment plant and allege violations of the NPDES permit deadline to construct and operate a disinfection facility at the Sand Island wastewater treatment plant. Plaintiffs recently filed a motion for partial summary judgment on Plaintiffs' third, fourth, and eighth claims. The hearing on this Motion is set for October 9, 2007.

This lawsuit is closely intertwined with another lawsuit, United States of America, et al. v. City and County of Honolulu, USDC Civil No. 94-00765 DAE-KSC (summarized below), and concurrent negotiations between the City, United States Environmental Protection Agency (EPA), State of Hawaii Department of Health (DOH), and the Sierra Club arising out of the March 24, 2006 rupture of the Beachwalk wastewater pump station force main and sewage spill. After a year of negotiations to address the March 2006 Beachwalk spill, in May 2007 the EPA, United States Department of Justice (DOJ), DOH and the City signed a stipulated order that requires the City to undertake certain actions to evaluate, repair, rehabilitate or replace certain force mains and one pump station in its wastewater collection system, and develop site-specific spill contingency plans at an estimated total cost of \$300 million dollars. The stipulated order is subject to a public comment period of 30 days, which has been extended by Court order. The NGOs objected to the entry of the stipulated order, however, the EPA, DOJ, DOH and the City pursued entry of the stipulated order and the Court has entered the stipulated order over the NGO's objections. This stipulated order resolves the entire civil enforcement action identified as USDC Civil No. CV07-00235 DAE-KSC, United States of America, et al. v. City and County of Honolulu (discussed below), that was simultaneously filed against the City when the stipulated order was submitted to the Court for approval. (Maile R. Chun)

United States of America, et al. v. City and County of Honolulu,
USDC Civil No. 94-00765 DAE-KSC

In 1994, the United States Environmental Protection Agency (EPA) and the State of Hawaii Department of Health (DOH) filed a lawsuit against the City, identified as USDC Civil No. 94-00765 DAE-KSC, United States of America, et al. v. City and

County of Honolulu, seeking penalties and injunctive relief relating to the City's wastewater collection system. Plaintiffs Sierra Club, Hawaii Chapter, Hawaii's Thousand Friends, and Our Children's Earth Foundation were not a party to this lawsuit.

On May 15, 1995, U.S. District Court Judge David Ezra entered a Consent Decree that concluded the litigation. This 1995 Consent Decree requires the City, among other things, to comply with the Clean Water Act, to establish a schedule under which the City is to implement preventive maintenance and sewer replacement and rehabilitation necessary to reduce and prevent spills, requires the City to implement and enforce its pretreatment program to regulate industrial discharges, and requires the City to develop and implement an effluent and sludge reuse program.

To meet these objectives, the City developed and is implementing a comprehensive collection system spill prevention program, carried out under the review and with the approval of EPA and DOH through at least 2019. The 1995 Consent Decree requires substantial capital improvement expenditure by the City for its collection system which is reflected in the City's 20-year Capital Improvement Program budget. The court retains jurisdiction over the terms and conditions of the 1995 Consent Decree until termination.

Thereafter, the NGO Plaintiffs filed their own lawsuit in July 2004 against the City, identified as Sierra Club, et al. v. City and County of Honolulu, et al., USDC Civil No. CV04-00463 DAE-BMK, and as summarized above, alleged, among other things, claims relating to the collection system that are fundamentally the same as those already being enforced by EPA in this 1994 lawsuit.

In January 2006, the NGO Plaintiffs filed a motion to intervene in this 1994 EPA lawsuit. Plaintiffs' motion to intervene sought to allow participation by the plaintiffs in the EPA's ongoing enforcement action against the City of collection system claims. In May 2007, the U.S. Magistrate issued findings and recommendation granting plaintiffs' motion to intervene subject to certain limited conditions. The U.S. District Court subsequently adopted the magistrate's findings and recommendation.

The 1994 lawsuit is closely intertwined with the 2004 lawsuit and the concurrent negotiations between the City, EPA, DOH, and the Sierra Club arising out of the March 2006 Beachwalk spill (discussed above). These concurrent negotiations resulted in a stipulated order that requires the City to take certain actions to evaluate, repair, rehabilitate or replace certain force mains and one pump station in its wastewater collection system, and develop site-specific spill contingency plans (see summary of USDC Civil No. CV07-00235 DAE-KSC, below). (Maile R. Chun)

United States of America, et al. v. City and County of Honolulu, **USDC Civil No. CV07-00235 DAE-KSC**

As a result of the March 2006 Beachwalk spill and after one year of negotiations, the United States Environmental Protection Agency, United States Department of Justice, State of Hawaii Department of Health and the City signed a stipulated order in May 2007 that requires the City to take certain actions to evaluate, repair, rehabilitate or replace certain force mains and one pump station in its wastewater collection system, and develop site-specific spill contingency plans. The stipulated order is subject to a public comment period of 30 days, which has been extended by court order. The NGO Plaintiffs have objected to the entry of the stipulated order. This stipulated order, if accepted by the court, will resolve this civil enforcement action that was simultaneously filed with the court when the stipulated order was filed with the court for approval.

The Sierra Club, Hawaii Chapter, Hawaii's Thousand Friends and Our Children's Earth Foundation filed a motion to intervene in this 2007 lawsuit. On June 26, 2007, U.S. District Court Judge David Ezra issued an order staying decision on the stipulated order until resolution of the motion to intervene, to allow the plaintiffs an opportunity to challenge or to concur in the stipulated order if its motion to intervene is granted. In the event that intervention is allowed, the NGO Plaintiffs will have a reasonable time not to exceed 30 days within which to file an opposition or a concurrence to the stipulated order.

The NGO Plaintiffs' Motion to Intervene was heard by U.S. Magistrate Kevin Chang. Judge Chang found and recommended to Judge Ezra that the Motion to Intervene be granted with applicants afforded 30 days within which to file its opposition or concurrence with the Stipulated Order and that following Judge Ezra's approval or decision on the Stipulated Order, the matter be referred back to the magistrate to determine what if any conditions on applicants' intervention are necessary. Judge Ezra subsequently adopted Judge Chang's findings and recommendation. (Maile R. Chun)

Laie Water Reclamation Facility

The Division assisted the Department of Environmental Services ("ENV") in drafting Amendment No. 5 to the Cooperative Agreement to Jointly Construct a Collection System and Transfer the Laie Water Reclamation Facility. The Division reviewed and ensured coordination of the terms of the four previous amendments to the Agreement, assisted ENV with negotiations for new terms in the Amendment No. 5, and reviewed other related contract documents required to be executed under the terms of the Amendment No. 5. (Reid M. Yamashiro, Maile R. Chun)

LAND USE SECTION

Nuuanu Valley Association v. City and County of Honolulu, Civil No. 06-0501-03 (RKOL) First Circuit Court, State of Hawaii

The Division successfully defended a lawsuit filed on March 23, 2006 against the City, Henry Eng in his capacity as Director, Department of Planning and Permitting (DPP) and David Tanoue in his capacity as Deputy Director of the DPP, pertaining to an application by Laumaka, LLC, for a nine-lot residential subdivision in Nuuanu Valley. The dispute involved plaintiff's access to all reports submitted to DPP pertaining to the proposed subdivision together with all comments of DPP, under the provision of the public information law, Chapter 92F, Hawaii Revised Statutes (HRS). DPP refused the request on the grounds that DPP had not yet accepted any of the reports and that until accepted a report is not a record maintained by DPP within the meaning of the statute and further that any DPP comments thereon were exempt from disclosure as predecisional and comprised DPP's deliberative process. The Division successfully defended against plaintiff's motion for preliminary injunction, the court having orally ruled in May 2006 that the records sought by the plaintiff's were not records maintained by DPP and thus not subject to the public access requirements of Chapter 92F, HRS.

At the hearing in November 2006 on plaintiff's motion for partial summary judgment, the City Defendants and Intervenor Laumauka, LLC, each orally moved for summary judgment in their favor. The Court granted the City's oral motion determining that there is no genuine issue of material fact and that the City is entitled to judgment as a matter of law. In entering judgment in favor of the City, the court concluded that: (1) the documents requested by the plaintiff are not records maintained by DPP; (2) until the documents requested by the plaintiff are "accepted" by DPP, the requested documents are not records maintained by the City, which the court noted was further evidenced by the fact that prior to acceptance by DPP, the requested documents were not kept within DPP files and were provided to the plaintiff by the subdivision applicant, Laumaka, LLC; (3) under Chapter 92F, HRS, and prior rulings by the Hawaii Supreme Court, government agencies are required to provide access to records that are "actually maintained" by the agency but here, the documents requested by the plaintiff were not maintained by DPP; (4) the Hawaii Supreme Court has held that Chapter 92F, HRS, imposes no affirmative obligation upon agencies to maintain or retain the documents requested for a specific period of time. Additionally, with respect to the plaintiff's claim that the City violated the Hawaii Environmental Protection Act by not requiring an environmental assessment, the court determined that the plaintiff failed to establish any use of state or county lands that would invoke the need for an environmental assessment. On June 15, 2007, plaintiff appealed the Circuit Court decision to the Hawaii Supreme Court. The appeal is pending briefing by the parties. (Don S. Kitaoka, Lori K. K. Sunakoda)

Keep the North Shore County v. City and County of Honolulu, Civil Nos. 06-1-0265-05 (GWBC) and 06-1-0867-05 (SSM) First Circuit Court, State of Hawaii

The Division successfully defended a lawsuit filed against the City and Henry Eng in his capacity as Director, Department of Planning and Permitting (DPP) that sought a supplemental Environmental Impact Statement (EIS) for the Kuilima Expansion Project. Earlier, in response to inquiries by others, DPP had concluded that a supplemental EIS was not required. An EIS had been prepared for the project that was accepted by the City in October 1985, as required by law. The court determined that there have been ongoing activities and actions for the project throughout the intervening 20 years, and in May 1999 the project was adopted as a part of the City's Ko'olaupua Sustainable Communities Plan. The court further determined that the EIS did not obligate any time limits on the phasing of the project. By order filed December 5, 2006, the court: (1) granted the motion for summary judgment filed by Defendant Kuilima Resort Company and joined in by Defendants City and Henry Eng; (2) denied the motion for summary judgment filed by the Plaintiffs Keep the North Shore County and Sierra Club, Hawaii Chapter; and (3) entered judgment in favor of the defendants in the lawsuit. On June 4, 2007, plaintiffs appealed the Circuit Court decision to the Hawaii Supreme Court. The appeal is pending briefing by the parties. (Don S. Kitaoka, Lori K. K. Sunakoda)

Center for Bio-Ethical Reform, Inc. v. City and County of Honolulu, 455 F.3d 9106 (9th Cir. 2006)

The Division pursued to a successful conclusion this year the City's hard-fought defense of its sign ordinance, which bans aerial advertising in the skies over Honolulu, against a challenge based on free speech grounds. The Division assisted the special deputy corporation counsel throughout this litigation.

Early in the year the Division prevailed in the U.S. Court of Appeals for the Ninth Circuit in the appeal taken by the plaintiffs of the Honolulu U.S. District Court's decision in the City's favor. The Ninth Circuit Court accepted the District Court's rulings that the aerial advertising ban is crucial to preserve the City's world-renowned scenic beauty and to protect its visitor industry, and is necessary to protect against distractions leading to traffic accidents. The Ninth Circuit Court ruled that the ordinance was not preempted by federal law regulating aircraft operations, the airspace above the City was a non-public forum for purposes of the Court's First Amendment free speech clause analysis, the ordinance was view-point neutral and reasonable, and did not preclude a unique or common means of First Amendment free

speech expression for which there was no other practical and effective means of communication, and it did not violate the Plaintiffs' right of equal protection.

Later in the year, the City successfully opposed the plaintiffs' petition to the United States Supreme Court for review of the favorable decision of the Ninth Circuit Court, thus bringing the litigation to a close. (Gordon D. Nelson)

Citizens Against Reckless Development v. Zoning Board of Appeals, 114 Hawai'i 184 (2007)

The City received a favorable decision from the Hawaii Supreme Court in a challenge to the issuance of the conditional use permit (CUP) by the Director of the Department of Planning and Permitting (DPP) to the Wal-Mart Real Estate Business Trust for its commercial development on Keeaumoku Street. Plaintiffs disputed the DPP action on substantive grounds alleging that the issuance of the CUP violated the City's Land Use Ordinance. The Supreme Court affirmed the decision of the Circuit Court and dismissed the appeal. The Court ruled that DPP's administrative procedures for declaratory action is intended to solicit agency advice on matters not yet determined, and was not a means to seek review of agency action already made. In this instance the Plaintiffs' recourse was instead to have directly challenged the agency action by filing an appeal within 30 days of the issuance of the CUP as provided for in the Land Use Ordinance and the rules of the City's administrative Zoning Board of Appeals (ZBA). Plaintiffs failed to timely pursue a direct challenge to the issuance of the CUP. The Court affirmed DPP's refusal to issue a decision on plaintiff's petition for declaratory ruling and found that the DPP action was not an abuse of discretion. (Lori K. K. Sunakoda for DPP; Dawn D. M. Spurlin for ZBA)

Pupukea-Paumalu Nature Preserve

The Division assisted various city agencies with the acquisition by the City for a nature preserve of 25.880 acres of the 1,129 acres of coastal bluff lands in Pupukea-Paumalu, acquired by the Trust for Public Lands from Obayashi Corp. The balance of the lands is to be transferred by the Trust for Public Lands to the State of Hawaii for park purposes. The property had been purchased by Obayashi Corp. in 1974 with the intention of developing the lands but had been placed on the market for sale in 2002. To ensure the future preservation of the lands the non-profit Trust for Public Lands collaborated with community groups, the State, city and federal governments to raise \$7.95 million in commitments to purchase the property. The City and the State each contributed \$1 million, the U.S Army contributed approximately \$3.34 million from its Compatible Use Buffer Program, the National Oceanic and Atmospheric Administration contributed approximately \$2 million from its Coastal Estuarine Land Conservation Program and the North Shore Community Land Trust contributed approximately \$629,600 of which \$600,000 was a grant from the U.S. National Park Service. Prior to the transfer of the lands, the property was rezoned by the City Council to general agriculture, redistricted by the State Land Use Commission from urban to agriculture and granted subdivision approval by the City Department of Planning and Permitting. (Donna M. Woo, Don S. Kitaoka)

PERSONNEL SECTION

UPW v. City and County of Honolulu (Grievance of Aleigh Pearson) Slip Opinion-2007 WL 1174175 (Hawaii App.)

The Division obtained a favorable decision from the State Intermediate Court of Appeals in an appeal by the City of an adverse decision in the First Circuit Court. The City appealed on the grounds that the First Circuit Court erred by not vacating the arbitration award in a union grievance. The case involved a Department of Environmental Services ("ENV"), Wastewater Collection System helper who was administered an alcohol and controlled substance pre-employment test for training for a commercial driver's license to operate a commercial motor vehicle for the employee to be eligible for promotion to a Repairer position. The results of the employee's breathalyzer test for alcohol concentration exceeded acceptable limits established by the United States Department of Transportation for individuals in safety-sensitive positions, such as those operating a commercial motor vehicle. Subsequently, ENV learned that under the terms of the employee's collective bargaining agreement, the employee should not have been administered the pre-employment alcohol test, only the controlled substance test should have been administered for pre-employment. ENV retained the alcohol test results and required the employee to submit to an evaluation by a substance abuse professional and undergo treatment if necessary before proceeding with the commercial driver's license training. The employee refused to participate in the evaluation or to receive any counseling. The employee's union filed a grievance challenging the ENV actions which was submitted to arbitration. Following hearing, by decision dated September 25, 2003, the arbitrator ordered the City to (1) remove all records pertaining to the alcohol test from the employee's records, (2) allow the employee to participate in the training for commercial driver's license, (3) promote the employee to the repairer position, and (4) pay the employee the difference in salary between the repairer position and the employee's actual pay for the period between the promotion and the date when the vacancy was filled by the City in June 2003. In the Circuit Court, the City opposed the union's motion to confirm the arbitration decision and the City filed a motion to vacate the decision on the basis that the arbitrator exceeded his authority in rendering his decision.

In its memorandum opinion dated April 17, 2007, the Intermediate Court of Appeals ruled that the arbitrator exceeded

his authority and violated public policy embodied in the collective bargaining law, HRS Section 89-9(d)(2), by ordering the City to promote the employee, who did not hold a commercial driver's license, to the position of repairer but that the arbitrator did not exceed his authority by ordering the City to remove the results of the alcohol test (which should not have been given) from the employee's records and to allow the employee to participate in commercial driver's license training. The union has been granted certiorari by the Hawaii Supreme Court of the Intermediate Court of Appeals decision, which remains pending. (John S. Mukai)

Everson v. State, Civil No. 06-1-001141, First Circuit Court, State of Hawaii

The division obtained dismissal of a class action complaint for declaratory relief against the State of Hawaii, Hawaii Employer-Union Health Benefits Trust Fund ("EUTF"), Board of Trustees of The Hawaii Employer-Union Health Benefits Trust (Board) and the counties of Honolulu, Maui, Kauai, and Hawaii, that alleged that retirees and their dependents are currently receiving medical and dental benefits which are inferior to the benefits provided to active state and county employees. The counties filed a substantive joinder to the State of Hawaii's motion to dismiss and argued that, because the counties have no representation on the Board or control over the EUTF, there can be no liability which inures to the county defendants. The county defendants further argued that nothing in state law, Chapter 87A, Hawaii Revised Statutes, mandate "substantially equivalent" medical and dental benefits sought by the plaintiffs. Oral arguments were presented on December 15, 2006. By minute order dated January 26, 2007 the court granted the motions to dismiss the lawsuit. The court noted that the EUTF has primary jurisdiction over the plaintiffs' claims, and that the EUTF is more appropriately the forum to interpret the issues raised by the plaintiffs; the court noted that under the EUTF's own administrative rule (2.03), any interested person may petition the EUTF for a declaratory ruling as to the applicability of any statutory provision administered by the board or of any rule or order of the fund. (John S. Mukai)

PUBLIC SAFETY SECTION

Retrofit for Automatic Sprinklers

The Division issued numbered opinion M 06-01 in response to an inquiry from the Honolulu Fire Department asking whether the City may institute different compliance deadlines for the retrofit of existing residential high-rise buildings with automatic sprinklers, depending upon whether the buildings corridors are open or closed. It was concluded that based upon the rationale presented for a longer compliance schedule for open corridor buildings than for closed corridor buildings due to the dissipation of heat and smoke from open corridors and this impact upon public safety of the building occupants in comparison with closed corridors, a rational basis exists for the different compliance schedules. (Paul K. W. Au)

Department of Emergency Management

The Division advised the Executive Branch on its proposal to elevate the Oahu Civil Defense Agency (OCDA) to a department in order to reflect the agency's heightened role in the prevention of and preparation and response to disaster and emergency situations, as well as to reflect the new responsibilities OCDA has undertaken following the creation of the Federal Department of Homeland Security. To that end, the Division opined on the procedures necessary to create a new city department and drafted the charter amendment and council resolution which resulted in the establishment of the Department of Emergency Management to replace OCDA. (Paul K. W. Au)

Military Housing Project (Radford Terrace)

The Division successfully negotiated a memorandum of understanding setting forth the City's responsibilities for providing essential services in five housing projects which were previously under the jurisdiction of the U.S. Department of the Navy and are now under long-term leases to a private developer. In exchange for the services provided, the leased premises and 2,003 housing units located thereon have been added to the City's real property tax base. (Paul K. W. Au)

SHOPO v. City and County of Honolulu, Honolulu Police Department

The decision in this grievance represents a procedural victory for the City. A metropolitan police officer applied for a sergeant/detective promotion in 2003 and underwent the written test and interview process. The Honolulu Police Department placed the grievant's name on the 2003 promotional list, from which other applicants were promoted over the next two years. By the time the promotional list expired in 2005, grievant had not been promoted. More than a month and one-half later, grievant filed a grievance over his non-selection for a promotion. The City filed a motion to dismiss the grievance on the grounds that it was not filed within the 20-day deadline for filing grievances under the terms of the applicable collective bargaining agreement. The arbitrator granted the City's motion and found that the grievance was untimely filed and therefore not arbitrable. The decision is significant in that it: 1) reinforces the City's position that untimely grievances do not have to be considered; 2) recognizes the limits on an arbitrator's jurisdiction in hearing matters not brought pursuant to the parties' collective bargaining agreement grievance procedure; and 3)

forces potential grievants to move vigilantly to comply with the grievance deadlines or risk dismissal of their grievances. (Florencio C. Baguio, Jr.)

HGEA v. City and County of Honolulu, Honolulu Police Department

This grievance was filed by the Hawaii Government Employees Association (HGEA) on behalf of a Honolulu Police Department (HPD) civilian employee who was terminated for being a willing participant and a principal in illegal gambling activities at his residence. The grievant had also pleaded guilty to a felony charge of first-degree promotion of gambling. Grievant's termination was due to the fact that his actions were contrary to the standards of HPD, including its basic mission of law enforcement. The Union argued that grievant's conduct was off-duty and away from the jobsite. However, the arbitrator denied the grievance and held that the discipline was based on an offense that was directly related to grievant's ability to perform the duties and responsibilities of his employment. Although not a sworn officer, the employee's civilian position allowed him access to confidential police information not available to the public and his employer, HPD, had justifiable concerns about a convicted felon having access to such information. The arbitrator's decision is significant in that it recognizes that off-duty conduct can form the basis for disciplinary action against an employee when there is a direct relation, or nexus, to that employee's performance of his duties and responsibilities. (Florencio C. Baguio, Jr.)

LITIGATION DIVISION

The Litigation Division consists of eleven attorneys: a division head, and 10 trial attorneys. The Division is supported by 12 support staff, which includes a supervisor, three paralegals, four legal clerks and four messengers.

The Litigation Division represents the City and County of Honolulu before all of the state and federal courts in the State of Hawaii, including the two appellate courts of the State of Hawaii, the United States District Court for the District of Hawaii and the Ninth Circuit Court of Appeals. The Division processes and litigates all claims by or against the City³, seeks collection of monies owed to the City, and handles Subpoenas Duces Tecum directed to the Honolulu Police Department.

In addition to tort claims, the Litigation Division handles claims relating to contracts, construction, civil rights, natural resources, employment issues and other non-tort related matters.

Statistics

During the 2006-2007 fiscal year, the Litigation Division handled a great number of cases against and for the City and County of Honolulu, including active lawsuits as well as pre-lawsuit claims, as set forth below:

Pending cases as of June 30, 2006: 2,129
Number of cases completed: 973
Number of cases opened: 1,399
Pending cases as of June 30, 2007: 2,555

HIGHLIGHTS AND ACCOMPLISHMENTS

Lawsuits

As in previous years, the Litigation Division continues to be involved in personal injury and civil rights actions filed against the City, its departments and its employees. During the past year, the Division took six cases to trial⁴ and filed dispositive motions in a number of other cases. The Division was successful in the majority of these trials and motions. Following is a brief summary of several of the cases successfully completed by the Division in the past year.

Onishi v. City and County of Honolulu, et al, First Circuit Court of the State of Hawaii. This lawsuit arose out of the death of plaintiffs' 26-year old daughter on August 9, 2002, when a five-ton boulder that was on private property ("Vaughan property") dislodged from the hillside adjacent to plaintiffs' home and crashed down into plaintiffs' home, killing their daughter. Plaintiffs alleged that surface run off from Pacific Heights Road passed through a drainage ditch on the road and drained through a pipe under the Vaughan driveway then down the hillside. Plaintiffs asserted that the water from this ditch prematurely eroded the hillside and this situation contributed to dislodging the boulder that struck their residence. Plaintiffs' daughter, Dara Onishi, was killed when the boulder crashed into the Onishi home. Plaintiffs alleged negligence against the City and the owners of the Vaughan property. The other defendants settled their claims with plaintiffs and the City proceeded to trial. The case was tried to a jury of 12. After 10 days of trial, the jury returned its

³The cases specified in this subsection are not a comprehensive listing of all cases handled by the litigation division and are merely offered as a representative sample of the types of matters assigned to the division.

⁴This includes two trials in the Honolulu District Court and one trial in Small Claims Court.

verdict in favor of the City. (Derek T. Mayeshiro, Jane Kwan)

Thompson v. City and County of Honolulu, et al, First Circuit Court of the State of Hawaii. Plaintiff filed a lawsuit against the City alleging negligent road design and maintenance as a result of a motor vehicle collision. On September 18, 2003, plaintiff was riding his motorcycle on Kupuohi Street at approximately 10:30 pm and was traveling through the intersection of Kupuohi and Polina Place when a vehicle driven by Tiffany Akana made a left turn from Kupuohi Street to go into Polina Place. In making this left turn, Akana pulled in front of plaintiff's motorcycle resulting in plaintiff crashing broadside into Akana's car. Plaintiff was thrown from his motorcycle and sustained serious injuries. Plaintiff alleged negligent road design and maintenance against the City; specifically, plaintiff alleged inadequate sight distance for motorists approaching this intersection. The evidence showed that plaintiff rode through this intersection on prior occasions with no problems. The issues of liability and damages were bifurcated for the trial of this case. After a nine-day jury trial on the issue of liability, the jury returned its verdict in favor of the City. (Richard D. Lewallen, Marie Manuele Gavigan)

SRS and Island Movers v. City and County of Honolulu, District Court of the First Circuit of the State of Hawaii. This is a subrogation lawsuit that arose out of motor vehicle damage. On December 2, 2005, an Island Movers' truck, while traveling east on King Street, struck a tree branch that was overhanging the mauka side of King Street within a block of Ward Avenue. The truck sustained property damage in the amount of \$11,165.56. Plaintiffs alleged that the City was negligent in its maintenance of the tree. After a bench trial which lasted one afternoon, the judge ruled in favor of the City and dismissed the case. (Kate S. Metzger, Curtis E. Sherwood)

Brooks, et al, v. City and County of Honolulu, et al, United States District Court for the District of Hawaii. The City was successful in getting this case dismissed on motion. Plaintiffs filed a lawsuit against the City and five police officers alleging various violations of plaintiffs' constitutional rights. Plaintiffs had signed a contract to purchase a vacant lot owned by defendants Monalim, and after the contract was signed, plaintiffs moved their trailers and other personal property onto the lot. After plaintiffs moved onto the lot, they failed to follow through with the purchase. Defendants Monalim called the police department to request help in evicting plaintiffs from the property. Three police officers responded and helped to get plaintiffs to leave the property. Soon after plaintiffs left the property, they filed their lawsuit seeking a temporary restraining order and alleging that their constitutional rights were violated. After the lawsuit was filed, the City filed its motion for summary judgment and was dismissed from the lawsuit. The five individual officers then filed their motions for summary judgment. The court granted the officers' motions and dismissed the case as to all the officers. (Marie Manuele Gavigan, Curtis E. Sherwood)

Kawamae v. City and County of Honolulu, et al, First Circuit Court of the State of Hawaii. The City was successful in getting this case dismissed on motion. Plaintiff filed his lawsuit alleging, *inter alia*, false arrest and wrongful imprisonment against the police department. In this case, plaintiff had been issued a traffic citation, but failed to appear resulting in the issuance of a bench warrant for plaintiff's arrest. Three months after the issuance of this bench warrant, plaintiff's attorney successfully moved for the recall of the bench warrant. However, the warrant was not immediately recalled subsequent to the granting of plaintiff's motion, nor was HPD notified that the warrant had been recalled. In addition, the warrant was not removed from the records of the Sheriff's Department. Approximately one year later, plaintiff, an OTS bus driver, was stopped by an HPD officer while driving The Bus for exceeding the speed limit. Per HPD procedure, the officer ran a check on plaintiff and was informed of the outstanding bench warrant. The warrant was then confirmed with the Sheriff's Department. Plaintiff was arrested on the outstanding warrant, but upon his appearance in court, the matter was dismissed. Plaintiff filed his lawsuit alleging false arrest and wrongful imprisonment against the City. The City filed a motion for summary judgment which was granted by the court and the case was dismissed. (Curtis E. Sherwood)

Bilan v. City and County of Honolulu, et al, United States District Court for the District of Hawaii. The City was successful in getting this case dismissed on motion. Plaintiff filed his lawsuit against the City and the Director of the Department of Parks and Recreation alleging violations of his constitutional rights and breach of contract. Plaintiff was an employee of the City and worked for the City's Department of Parks and Recreation ("DPR"). During his employment with DPR, a fellow employee filed a complaint of workplace violence against plaintiff. After investigation of the complaint, plaintiff's employment with the City was terminated. Plaintiff was afforded contractual rights in accordance with the collective bargaining agreement that was in effect during the relevant time period. Plaintiff filed a grievance regarding the termination of his employment, but the union did not pursue the grievance. When the union did not pursue the grievance, plaintiff filed this lawsuit alleging various claims including violation of the fifth and fourteenth amendments to the constitution, termination of his employment in violation of public policy and breach of contract. The Director of DPR filed a motion for summary judgment which was granted and the case against him was dismissed. The City subsequently filed its motions for summary judgment which were granted and all claims made in this case were dismissed. (Jane Kwan, Marie Manuele Gavigan)

Utu, et al, v. City and County of Honolulu, et al, First Circuit Court of the State of Hawaii. The City was successful in getting this case dismissed on motion. This case arose out of the shooting death of two men at the Pali Golf Course on January 7, 2004. Plaintiffs (all relatives of the deceased) generally alleged negligence against the City and loss of

consortium. The only connection the Pali Golf Course had with this matter is that the two men were shot on the golf course property. The City filed its motion to dismiss the Complaint for failure to state a claim. The court granted this motion and dismissed all claims against the City. (*Marie Manuele Gavigan*)

The Division successfully settled several civil rights cases against police officers (*Kahawai v. City*, *Pardee v. City*). In these cases, police officers were accused of unlawful detention or excessive use of force. The Division successfully settled a drowning case in which negligence was alleged against the City (*Estates of Powell and Laughlin v. City*), several employment cases (*English v. City*, *Shannon v. City*), and several negligence cases (*Heydon v. City*, *Au v. City*, *Nunes v. City*). The Division also successfully settled a breach of contract action against the City (*KD Construction v. City*).

The Division is currently defending the City in several high profile use-of-force or police practices cases (*Edenfield v. City*, and *Gaspar v. City*). Several motor vehicle accident cases involving the City are also being handled by the Division (*Filimoehala v. City*, and *Fellez v. City*). Several beach drowning or injury cases are being defended by the division (*Hoggs v. City*, *Sylva v. City*, *Mendoza v. City*, *Kuhlmeier v. City*). The Division is also litigating numerous negligence claims filed against the City (*Robinson v. City*, *Horner v. City*, *Kuhns v. City*, *Cornelison v. City*).

The Division has also taken the lead in defending the City in several non-traditional tort cases alleging improper employment practices, sexual harassment, workplace violence and whistleblower claims (*Sunia v. City*, *Olipares v. City*, *Miller v. City*, and *Matsumoto v. City*). The Division has taken on the task of representing city officials who have been sued in their individual capacity for alleged acts or omissions arising out of their employment status with the City (*Whang v. City*, *Black v. City*). The Division is also involved in defending a Declaratory Judgment action in which the promulgation of an administrative rule is being challenged (*AOAO Waikiki Shore, Inc. v. City*).

The Division was successful in a case in the Appellate Court. In *Bohannon v. City and County of Honolulu, et al*, the City obtained a verdict after jury trial and plaintiff appealed to the Hawaii Intermediate Court of Appeals ("ICA"). The ICA affirmed the jury verdict.

Additionally, the Division has been litigating claims against the City in actions previously handled by the Counseling and Drafting Division. The Division has continued handling highly specialized and technical actions such as injunctive relief proceedings (*Onishi v. City*), and actions relating to the land or diversion of water (*Masters Properties v. City*, *Poland v. City*).

State Legislation

The Litigation Division also continued with its advocacy of legislation favorable to the City by drafting proposed bills and testimony regarding tort reform, governmental immunity and governmental tort claim procedures. This past year, the Division took an active role in its advocacy of legislation by testifying before numerous House and Senate Committees regarding various proposed bills that directly impact the City.

FAMILY SUPPORT DIVISION

The Family Support Division ("FSD") provides legal representation for the State of Hawaii Child Support Enforcement Agency ("CSEA") in several types of Family Court proceedings in the City and County of Honolulu. FSD

establishes paternity, secures child support, medical support, and provides enforcement in complex Family Court cases. FSD also handles intracounty and interstate paternity actions.

Historically, the City and County of Honolulu prosecuted parents on Oahu for criminal and civil non-support. Presently, the Federal Government and the State of Hawaii compensate the City for one hundred percent of FSD's operating expenses through CSEA. FSD provides these services pursuant to a cooperative agreement between the Department of the Corporation Counsel, City and County of Honolulu, and the Child Support Enforcement Agency, State of Hawaii, and in compliance with Title IV-D of the Social Security Act.

Statistics

During the 2006-2007 fiscal year 2,284 new referrals for paternity establishment were made to the FSD. An additional 642 cases were carried over from the previous year. Paternity was determined in 2,744 cases during the 2006-2007 fiscal year. An additional 182 cases are pending and should be completed during the 2007-2008 fiscal year.

Pending cases as of July 1, 2006:	642
Number of cases completed:	2,744
Number of cases opened:	2,284
Pending cases as of June 30, 2007:	182

HIGHLIGHTS AND ACCOMPLISHMENTS

Expedited Paternity Project

The Family Court of the First Circuit in conjunction with FSD and CSEA has established the Expedited Paternity Project. This project allows parties to other types of Family Court proceedings to voluntarily establish paternity of their children at the same time. The need to do a separate paternity action is thereby avoided. This saves the First Circuit Court and FSD the clerical and legal costs related to the drafting, filing, serving, scheduling, and hearing a paternity case.

Paternity Section of the Hawaii Divorce Manual

The FSD legal staff wrote a section on paternity and paternity in divorce for the 2001 Hawaii Divorce Manual for use by Hawaii family law practitioners and the general public. The section provides an intensive overview of the substantive law, procedures, case digests, forms, and other relevant materials. FSD has updated the section each year. FSD is in the process of updating the section for a new edition of the manual to be published this year.

Public Education

The FSD legal staff made an effort to participate in judicial and public education on the issues of paternity and child support and have given educational presentations to many groups and state agencies.

Legislative Changes Initiated by Division

The FSD does not initiate legislative changes to child support and paternity laws. The FSD makes recommendations to CSEA and the Agency takes the lead on any legislative changes.

Court Paternity Forms and Procedures

In a collaborative effort with the Family Court, the FSD has been working to modify existing court paternity forms and procedures.

Training

The FSD legal staff attended numerous professional development-training sessions provided by the Department of the Corporation Counsel, the Child Support Enforcement Agency, the Department of Human Services, the Hawaii State Bar Association and the Family Court.

REAL PROPERTY TAX DIVISION

The Real Property Tax ("RPT") Division is comprised of two attorneys. They are assisted by two support staff.

The RPT Division maximizes intake of real property assessment revenues to the City and County of Honolulu ("City") by efficiently managing cases and vigorously defending the City against real property tax appeals brought in Tax Appeal Court ("TAC"). On occasion, the RPT Division also defends the City against appeals brought before the Board of Review.

The RPT Division provides legal advice and support to the Real Property Assessment Division ("RPAD"), the Treasury Division, and the Department of Budget and Fiscal Services ("BFS"), as necessary to supplement the Counseling and Drafting Division's functions. Also, the RPT Division assists the RPAD in drafting and implementing procedures and proposed legislation that will support assessments and resolve disputed legal issues.

The RPT Division coordinates and works with the other counties in developing appraisal procedure and legislation, as well as litigation practices through the ongoing exchange of information and support of legal positions on common issues.

The RPT Division continues to build good working relationships with the TAC Judge and court personnel, while implementing office and court procedures to streamline prompt resolution of cases. The RPT Division continues to obtain information about properties through discovery in court cases to assist the RPAD and to optimize the assessment process, and uses the City's private consultant/appraiser for appraisal training and litigation support.

Statistics

During the 2006-07 fiscal year, in resolving appeals before the TAC, the RPT Division recovered about \$14.6 million in total taxes and approximately \$3,801,971 above the tax amounts claimed by the appellant taxpayers.

For the fiscal year, the RPT Division opened 22 new appeals and received 20 assignments, had a previous workload of 275 appeals and assignments, and completed and closed 72 appeals and eight assignments. Additionally, the RPT Division received about two to four informal requests per week from the RPAD for advice and other assistance.

HIGHLIGHTS AND ACCOMPLISHMENTS

Appeals and Related Matters

Tax Appeal of Brian C. Rodrigues, Case No. 05-0055.

In January 2007, the RPT Division prevailed at trial in this appeal involving a luxury condominium on Oahu's Gold Coast, which the City had valued at over \$1 million.

Tax Appeal of Elizabeth Dailey and Michael Dailey, Case Nos. 05-0085 and 05-0086 (Consolidated). In March 2007, the RPT Division defended at trial the City's 2006 assessment of the Dailey Estate, consisting of two agricultural-zoned beachfront parcels located next to the Dillingham polo field in Mokuleia. At issue was the appropriateness of a Dilmore size adjustment, a mass appraisal technique that the City applied to all agricultural lots to reflect how price is affected by parcel size in the marketplace. The appellants' appraiser opined that no adjustments for size or time were necessary. A decision is pending.

Other Matters

During the fiscal year, the RPT Division provided advice and assisted on a variety of other matters such as:

Agricultural Land Dedication

The RPT Division assisted in resolving a dispute involving lands formerly used for pineapple farming by the Del Monte company. The RPT Division opined that the lands at issue did not qualify for the agricultural dedication sought by the landowner.

Real Property Tax Relief

The RPT Division opined regarding the legal ramifications of proposed tax relief legislation, monitored for legality the tax relief bills introduced in the City during the first half of 2007, and testified at city council hearings when necessary.

State Legislation

The RPT Division prepared testimony and testified in support of SB 1342 and the companion HB 1256, which amended the appeal process to require service upon the real property assessment division in order to perfect an appeal. The Division also testified in opposition to proposed state legislation that would have given real property tax exemptions to agricultural lands and kuleanas, unconstitutionally usurping the City's exclusive authority over such matters.

County Tax Credit

The RPT Division worked with the State Department of Taxation on a Memorandum of Understanding regarding the sharing of income information to enable the City to verify income figures provided by applicants for the county tax credit.

Totally Disabled Veteran's Exemption

The RPT Division undertook research and rendered opinions to the support services branch of the RPAD, regarding the interpretation and application of the exemption for homes of totally disabled veterans. The assignment culminated in a staff meeting and preparation of a notification letter to title companies concerning the tax consequences of a sale of property receiving the veteran's exemption.

Statewide Board of Review Conference

The RPT Division assisted the RPAD in planning the agenda for the statewide annual conference of the boards of review for each county, held at the Ala Moana Hotel. This involved coordinating presentations with representatives of each county and conducting a legal question and answer forum.

ETHICS COMMISSION*

Charles W. Totto, Executive Director and Legal Counsel

The purpose of the Ethics Commission is to ensure that city officers and employees understand and follow the standards of conduct governing their work for the public. The most common areas of inquiry are financial and personal conflicts of interest, gifts, political activities, post-government employment and the misuse of government resources or positions. The commission implements its objectives through a balance of training programs, ethics advisory opinions and enforcement actions.

The ethics laws are found in Article XI of the Revised Charter and Chapter 3, Article 8, of the Revised Ordinances. To find out more about the commission and its activities, visit our web site at www.honolulu.gov/ethics. The web site has information about the commission's meetings, procedures, the standards of conduct, and useful guidelines for the public and employees and officers.

**The Ethics Commission is attached to the Department of Corporation Counsel for administrative purposes only.*

The seven commission members are appointed by the Mayor and confirmed by the City Council. Commissioners serve staggered five-year terms. The members during Fiscal Year (FY) 2007 were:

TERM EXPIRATION

Lex R. Smith, Esq., Chair	December 31, 2011
Raymond H. Fujii, Vice-Chair	December 31, 2006 (holdover)
Susan H. Heitzman	December 31, 2010
Matthew H. Kobayashi	December 31, 2009
Wayne T. Hikida	December 31, 2009
Cynthia M. Bond	December 31, 2008

The commission is staffed with an executive director/legal counsel and a legal clerk. The commission's budget for FY07 was \$158,424 and will be \$206,361 for FY08.

HIGHLIGHTS AND ACCOMPLISHMENTS

Education and Training

The commission staff continued the mandatory ethics training for all elected officials, managers, supervisors and board and commission members. Honolulu's mandatory ethics training programs is one of the most ambitious in the United States. In FY07, the commission staff trained 295 officials, bringing the total to over 3,600 public servants trained since the law was enacted. In addition, the commission staff presented its "Ethics Checklist" orientation to 541 new city officers and employees. As a result, almost all of the current city officials and more than half of the City's workforce have received some form of ethics training. Some agencies are taking advantage of the training beyond those who are required to attend. For example, all councilmembers and staff, Emergency Medical Services personnel and Fire Department recruits attend training tailored to their work. These programs continue to greatly reduce the number of unintentional ethics violations. In addition, these programs should increase public confidence in our city employees and officers.

The commission updated its web site to include all its formal advisory opinions, along with an updated index and other information. The commission received 4,926 hits on its web site in FY07.

Advice and Enforcement

In the past fiscal year, the commission received 415 requests for advice and complaints. By the end of the FY07, the commission had responded to 395. The commission also received and reviewed 435 financial disclosure statements from high-level city officials.

The commission held nine meetings and issued no formal advisory opinions.

The commission investigated a record high 32 complaints of unethical conduct by city personnel. There was a substantial increase in the number of complaints against middle managers and a decrease in complaints against high-level administrators.

Legislation

Along with the ethics boards of the other counties, the commission supported the introduction of bills at the legislature that would confer jurisdiction on the circuit courts for impeachment actions against elected and appointed officers. These measures did not pass, but will be reviewed again in the 2008 legislature.

To implement a 2006 charter amendment, the commission crafted and the council introduced Bill 60, which will permit the commission to impose civil fines on the City's elected officers for ethical misconduct.

Goals for FY08 include:

1. Use an increased budget to thoroughly investigate and recommend discipline of city personnel, as appropriate, in complaint cases;
2. Commence ethics re-training classes for all city supervisors, managers, elected officers and board and commission members to keep them aware of ethics issues that affect city government;
3. Continue to work more closely with other city agencies to enforce the ethics laws, including issues that arise from the City's Integrity Hotline scheduled for introduction this fall; and
4. Work with the legislature to confer jurisdiction on the circuit courts for cases of impeachment against county officers.